127-700

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 1411.

PLYANT MAHON, APPELLANT,

vs.

ABNER JUSTICE, JAILER OF PIKE COUNTY, KENTUCKY.

BRIEF FOR APPELLANT.

EUSTACE GIBSON,
Of Counsel for Appellant.

Judd & Detweiler, Printers.

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BRIEF FOR APPELLANT.

STATEMENT.

The following is believed to be a correct statement of the facts and pleadings in this case, as shown by the record:

Some time in the year 1872, in the county of Pike, State of Kentucky, Ellison Hatfield, a citizen of Logan county, West Virginia, was assaulted and murdered by three McCoys, citizens of Kentucky. Two of these McCoys were thereupon arrested by a mob, believed to be citizens of the said county of Logan, and shot to death. For this twenty-eight citizens of the said county of Logan were afterwards indicted in due form of law in the proper court, in the said county of Pike and State of Kentucky, in that same year, and bench warrants were properly issued for their arrest. Although these twenty-eight men were openly living within the State of West Virginia and within twenty miles of the

county-seat of the said county of Pike ever since that time, no requisition was ever made by the Governor of Kentucky upon the Governor of West Virginia until in November, 1887; and, although they were frequently during all this time in the said county of Pike and at its court-house, no attempt was ever made to arrest any of these men, and especially the appellant, Plyant Mahon, and the eight others now incarcerated in the jail of the said county of Pike.

About November, 1887, some parties in the said county of Pike, supposed to be Perry A. Kline, a deputy sheriff and jailer of said county; Lee Fergurson, the county attorney, and Frank Phillips, another deputy sheriff of said county, induced the Governor of Kentucky to offer large rewards for the capture of these men and requisitions upon the Governor of the State of West Virginia for their rendition as fugitives from the justice of the State of Kentucky. In this requisition the aforementioned Frank Phillips was appointed the agent of the State of Kentucky by the Governor thereof in due form of law, and he thereupon duly notified the Governor of West Virginia of such action, and formally delivered such requisition and demanded the rendition of said prisoners. After some preliminary correspondence between the Governors of the two States looking to a fuller compliance with the forms of law in such cases the said Frank Phillips was duly notified that the Governor of West Virginia had directed warrants to issue for the arrest and delivery of these men to him as agent for the State of Kentucky, and that the same would be done upon the payment of $54, the fees provided for by law. This he declined to do, but agreed to pay $15, the costs for the warrants for four men whom he named, stating that he did not want the others.

Neither the appellant, Plyant Mahon, or either of the other men now in jail as aforesaid was one of those four. They are men he expressly said he did not want. In the meantime it came to the knowledge of the Governor of West

Virginia, through affidavits of most reputable men, that the said requisition was being used as a means for extorting money from the parties therein named, and that the said Perry A. Kline, certainly, and the said Phillips and Ferguson, presumably, were engaged therein. Of this Governor Wilson, of West Virginia, notified Governor Buckner, of Kentucky; requested him to inquire into the matter, and informed him that he would hold up the warrants in the meantime. He also caused the said Frank Phillips to be notified and the $15 to be forwarded to him.

As soon as the said Frank Phillips received this notice he openly, and in the full view and knowledge of all the authorities of the said county of Pike, proceeded to raise and enlist a force of about thirty men, citizens of the State of Kentucky, mounted them on horses, armed them with Winchester rifles and revolvers, openly marched into the county of Logan and State of West Virginia, and for more than one month continued, with forces of different numbers, to raid and arrest the citizens of West Virginia residing in the counties of Logan and McDowell until he had succeeded in arresting your appellant, Plyant Mahon, and the eight others before mentioned.

During this time this Frank Phillips, the deputy sheriff of the said county of Pike and the agent of the State of Kentucky, made five distinct and open raids into the State of West Virginia, on one of which he attacked a posse of seven men who had been summoned by a constable of the county of Logan, routed them, shot down one, and then coolly walked up to the wounded man, placed his rifle to his head, and burst his skull into fragments. On another raid he wounded and murdered another citizen of West Virginia in the same manner, shoving aside his gray-headed wife to do it. I call the attention of the Court to these matters, because, when Governor Wilson called Governor Buckner's attention to them, he, Governor Buckner, still endorsed and stood by his agent, Phillips.

The eight men arrested, as above stated, were arrested on three different raids, and as fast as arrested were conveyed by the men arresting them to the jail of Pike county, and there locked up by the said Kline, jailer thereof, and then the raiders would return to West Virginia for others. No attempt was made by any of the authorities of the State of Kentucky to stop this war and bloodshed until Governor Wilson, of West Virginia, called out troops and was hurrying them to the locality of this invasion, and formally requested Governor Buckner, of Kentucky, to take some steps to stop it.

After these men had been locked in jail over night and while still under lock and key in the said jail the sheriff of the said county of Pike would the next day serve warrants upon them.

After this raiding had been stopped and the Governor of West Virginia could ascertain which of his citizens had been thus captured he made formal demand upon the Governor of Kentucky for their restitution. This the Governor of Kentucky refused to do; therefore this appeal to the courts of the United States to preserve the integrity and dignity of our State and the rights and liberties of our citizens as secured to us and them under and by virtue of the Constitution of the United States.

On the 5th day of April, 1888, Governor Wilson, of the State of West Virginia, in his official capacity and in behalf of the State of West Virginia, made formal application before the district court of the United States for the district of Kentucky for a writ of *habeas corpus* for the appellant, Plyant Mahon, and the eight other citizens of West Virginia so held as aforesaid, and at the same time and before the same court one John Shepherd made a like application.

The honorable court granted a writ and directed that the proceedings be carried on in the name of the said Shepherd as relator.

Afterwards your appellant, Plyant Mahon, filed his indi-

vidual application before the said court, and it was agreed and directed that the proceedings upon the three applications be carried on under the name of Plyant Mahon as relator.

Upon the hearing of the case the district court refused to release your appellant, Plyant Mahon, or the other prisoners, but remanded them back to the possession of the jailer of Pike county. From this order your appellant and the others appealed to the circuit court for the sixth circuit of the United States. That court confirmed the judgment of the district court, and from that judgment of the circuit court your appellant now appeals to this Court. Should there be any inaccuracy found in this statement upon comparison with the record I beg the Court to remember that I have not that record before me and write from memory.

Before proceeding to state the points of law raised and relied on in this case I ask leave to remind the Court that while these three several applications for the writ were before the court below and were made a part of the record and each considered and acted upon by that court, that court, for its own convenience and by agreement, selected one style for the case and directed it to be known and denominated accordingly upon the docket, so the term relator will be used to refer to each claim made.

ARGUMENT.

The first rights to which I shall call the attention of the Court will be those of the State of West Virginia, and the first wrongs of which I shall complain will be hers. Although not one of the original States making the compact of the Constitution, by her admission as a State the Federal Government guaranteed her all rights they had or have, and she may, therefore, be regarded as a sovereignty which, for certain considerations, surrendered certain rights to a greater sovereignty and assumed certain obligations towards that

sovereignty in consideration of obligations upon its part. Among the rights she surrendered (for the purposes of this case) were the rights to make treaties, raise armies, and declare war. Among the obligations she assumed were to pay taxes for the support and honor the drafts by sending her citizens to the defense of the Federal Government or any State thereof. In consideration of these things the preamble of the Constitution was adopted as the key to the construction of that instrument. It was in order to form a more perfect union, establish justice, insure domestice tranquility, &c. To perform all the obligations of the General Government to the States the three branches of Government were charged with certain duties and neither branch could throw its duties upon another.

Questions between the States, between citizens of one State and those of another, between one State and the citizens of another, and the rights of property, liberty, or life all belong exclusively to the judiciary provided for in article III. In section 4 of article IV it guarantees each State "against invasion."

Now, I respectfully submit that the facts stated above constitute an "invasion." If twenty-eight armed men, under an officer of another State, arresting our citizens, to have them answer to the laws of an invading force, is not an invasion, why would a thousand or any other number of men so acting be an invasion?

If they have the right to take and carry from the State of West Virginia nine of her citizens, why have they not the right to carry away a thousand, or even the whole population of that State, to their prisons if they had the power? If a strong State can thus decimate a weaker one, how can that weaker one perform her constitutional duty to the General Government, or even maintain her own? To enable his State to maintain itself and carry on the functions of government it is necessary that Governor Wilson should have his citizens secure in their citizenship, quieted in their dom-

iciles, and confident in the sanctity of the laws of their State and of the United States. If these things are to be allowed no man, woman, or child in any State can know at what moment he or she may be captured and carried from home to a foreign jurisdiction.

The State has surrendered her power to recapture these men to the General Government, and I therefore respectfully submit that it becomes the duty of that Government to do through its courts in this case what the State would otherwise do through its armies, and upon this point I cite your honors to 3d McLean, 127—Smith's case.

That the Governor of a State has the right to make this application I refer to the well-known rule of the common law.

That in cases of orphans and those of general interest affecting the public it is the duty of the Crown as "*pater patria*" to sue out writs of *habeas corpus* and its solicitor to prosecute them. (Dow's Case, 18th Penn.)

That it was intended that the Federal courts should have the power, in protecting the liberty and lives of the citizens of the different States, to supervise and set aside the decrees of State courts and liberate men held under them as well as to disregard acts of State Legislatures, I refer to articles V, VI, VIII.

The relator, Plyant Mahon, claims that under article IV, section 2, he was guaranteed all the "privileges and immunities of citizens of the several States," and he asserts that the dearest of all those "privileges and immunities" was the right to enjoy his domicile unmolested and to appeal to the courts and laws of his State and judgment of his peers for protection. These have been denied him.

He again asserts that the second clause of that same section, after making this guarantee, provided the only means by which he could be deprived of those benefits, and that that is the only "due process of law" by which he could be so deprived.

He asserts that article guarantees that he shall not "be deprived of life, liberty, or property without due process of law," and he claims that his confinement is such.

Again, he asserts that the State of Kentucky, in enforcing what she claims to be one of her laws, in his case is violating the Fourteenth Amendment to the Constitution, which declares that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and he claims that this action on the part of the said State of Kentucky does "abridge his privileges and immunities."

Being thus captured contrary to the provisions of the Constitution and having rights thereunder, he submits that the Federal courts have jurisdiction of his case and should right his wrongs. In that I refer to Rauscher's case, 407, and Keer's case, 436, 119 United States Reports.

But the State of Kentucky, admitting the wrongful capture and violation of the relator's, Plyant Mahon's, constitutional rights, claims that she was no party thereto, and not responsible therefor. This position is untenable. The taking and holding was one continuous act by the same officers of the State of Kentucky, and was her act for the purposes of this case. The act of Phillips in capturing and of Kline in locking him up in jail without warrant or mittimus, were both the wrongful acts of the State of Kentucky (see Cooley's Constitutional Limitations, page —); and being thus carried out of their own jurisdiction into the jurisdiction of the State of Kentucky by fraud and force of arms, and held under arrest, while so held no process could be legally served upon him or become "due process of law," nor could the State of Kentucky or the courts thereof acquire any rights or get any jurisdiction by this wrong.

Upon this point I refer to 18 Penn., 37 ; 12 Pickering, 270, and cases therein cited, and to 16th American Decisions, 723, and note.

In view of all of which I respectfully submit that the re-

lator has been captured and is now detained, in violation of his constitutional rights as a citizen of the State of West Virginia and of the United States, and that the State of West Virginia has been invaded and deprived of the use, services, and enjoyment of her subjects in violation of the Constitution of the United States of America.

EUSTACE GIBSON,
Of Counsel for Appellant.

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Supreme Court of the United States.

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PLYANT MAHON, *Appellant*,

vs.

ABNER JUSTICE, *Jailer*, &c., *Appellee*.

No. 1,411.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

Brief for Appellee.

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R. O. POLKINHORN, PRINTER.

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No. 1,411.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

Brief for Appellee.

STATEMENT.

The appellant, Plyant Mahon, was brought before the District Court of the United States for the district of Kentucky, on a writ of *habeas corpus* issued upon two petitions signed respectively by E. W. Wilson, governor of West Virginia, and John A. Shepherd, each alleging substantially that said Mahon had been forcibly seized by a body of armed men, acting without warrant, or other legal authority, and carried against his will from the State of West Virginia into the county of Pike in the State

of Kentucky, where he was unlawfully imprisoned in the jail of said county, and praying his discharge upon the ground that his arrest and detention were in violation of the constitution and laws of the United States. The court in view of the fact disclosed upon the return of the writ overruled the motion for his discharge, and remanded him to the custody of the jailer; whereupon he appealed to the Circuit Court, and that court having affirmed the judgments of the District Court, the case is brought here on appeal.

It appears from the jailer's return to the writ of *habeas corpus*, which is not controverted, and must therefore be taken as true, that at the September term 1882 of the Circuit Court of Pike County, Kentucky, the appellant Plyant Mahon, who was at the time, and ever since has been a citizen and resident of West Virginia, was indicted in three cases for the crime of wilful and deliberate murder, alleged to have been committed by him in that county; that the three indictments thus found against him were duly docketed, and bench warrants for his arrest issued thereon in pursuance of orders entered of record at each succeeding term of the court, which were successively returned not executed; that on the 10th day of September, 1887, the governor of Kentucky made upon the governor of West Virginia a requisition in writing under the seal of the Commonwealth, demanding the arrest and rendition of said Mahon, to answer said indictments for murder; that said requisition was accompanied by a copy of the indictment therein referred to, which was certified by the governor of Kentucky, to be authentic; that one Frank Phillips was appointed by the governor of Kentucky as agent to receive and bring said Ma-

hon into the State of Kentucky when arrested under said requisition; that on the 30th day of September, 1887, the governor of West Virginia returned said requisition to the governor of Kentucky, with information that the same would not be complied with unless accompanied by an affidavit as prescribed by the statutes of West Virginia; that on the 13th day of October, 1887, the governor of Kentucky again sent said requisition to the Governor of West Virginia, accompanied by the affidavit required by him; that the Governor of West Virginia, nevertheless, still declined to issue a warrant for the arrest and rendition of said Mahon, in compliance with said demand; that on the 5th day of December, 1887, in pursuance of an order of the court having jurisdiction of the indictments pending against said Mahon, a bench warrant for his arrest upon each of said indictments was issued and placed in the hands of the sheriff of Pike county for service; that on or about the 12th day of January, 1888, Frank Phillips and others, without any warrant, authority, or command of the Commonwealth of Kentucky whatever, but in pursuance of their own wills and of their own wrong, violently seized the said Mahon in the State of West Virginia, and carried him, by force and against his will, into Pike county, Kentucky, where the sheriff executed upon him the three writs which had been issued for his apprehension, and delivered him into the custody of the jailer of said county, with copies of said writs, as required by the statute of said State, and that said jailer held said Mahon confined in the jail of said county, in pursuance of the mandate of said writs, and to answer said indictments for murder, when the writ of *habeas corpus*

was served upon him. It further appears that on the 1st day of February, 1888, the Governor of West Virginia made a demand in writing upon the Governor of Kentucky for the release of said Mahon from jail and for his safe conduct back into the State of West Virginia, with which the Governor of Kentucky respectfully declined to comply. (See jailer's return and amended return, Record, pp. 7, 44, 45.)

I.

From the foregoing facts, which are set down in their chronological order, and not disputed anywhere in the record, it is manifest that this proceeding is in no sense a controversy between the two States, notwithstanding the petition of the Governor of West Virginia over his official signature, attested by the broad seal of his Commonwealth, asking the intervention of the District Court in appellant's behalf. Even if it should be conceded that the State of West Virginia has any just grounds of complaint against the State of Kentucky, such grievance could only be redressed by a direct proceeding exclusively within the jurisdiction of this court, and not collaterally in a case like this. It is clear, however, that no such grievance exists. There is no logical or legal connection between the antecedent action of the executive of either of those States, and the forcible seizure and deportation of appellant, nor did the subsequent transactions of either of them have the slightest effect upon the legality of the prisoner's detention under the regular process of Kentucky, executed upon him after he had been brought into that State.

It is true that Frank Phillips, one of the parties who forcibly arrested Mahon, had been appointed by the Governor of Kentucky to receive and transport him to Kentucky, in the event of his arrest under a warrant from the Governor of West Virginia, in pursuance of sections 5278, 5279 of the Revised Statutes of the United States. But that appointment did not confer, or pretend to confer upon him the least shadow of authority to make the arrest himself, either in the State of West Virginia or elsewhere. And it may also be true that Phillips said, at the time of making the arrest, that he was acting as State agent, and had authority from the Governor of West Virginia to make it; but that statement, if made, was simply a falsehood. As the District Judge very justly says in his opinion (Rec., p. 75):

"The Governor of West Virginia never issued a warant for the arrest of petitioner, nor had Phillips any authority to do so either from the Governor of West Virginia or the Governor of Kentucky, or any one else. The process by which a lawful extradition could be made was never used, nor did Phillips act under color of authority."

II.

Eliminating from consideration, therefore, the transactions of the Executives of the two States, both preceding and subsequent to the arrest of appellant as having no legal effect upon the validity of his detention in the Pike County jail, under authority of a lawful warrant, and consequently totally irrelevant, as well as the voluminous correspondence between them, which constitutes the great bulk of

the record, the real facts upon which the present controversy hangs, are reduced to the following :

1. That the appellant was under indictment in the criminal court of Pike county, Kentucky, in three cases, for murder.

2. That warrants for his arrest, to answer said indictments, were regularly issued and placed in the hands of the proper officer, for service, on the 5th day of December, 1888. (See Exhibits 1, 2, 3, Record, pp. 8–9.)

3. That, on or about the 12th day of January, 1888, appellant was forcibly arrested in the State of West Virginia by a body of armed men, acting without warrant or color of legal authority, and carried, against his will, into Pike county, Kentucky.

4. That, after he was taken into that county, the warrants for his arrest were executed upon him by the sheriff, who delivered him to the jailer thereof, together with copies of said warrants, as required by law ; and,

5. That he was detained in the jail of said county, under and by virtue of said warrants, to answer said indictments when the writ of *habeas corpus* was served upon the jailer.

And upon these facts, admitted on all hands to be true, the sole question to be determined is, whether the detention of appellant in the jail of Pike county, under the circumstances and for the purpose disclosed, is in violation of the Constitution or any law of the United States. If not, the judgment of the circuit court must be affirmed, as it is expressly

provided by section 753 of the Revised Statutes, that—

"The writ of *habeas corpus* shall in no case extend to a prisoner *in jail* unless when he is in custody under or by color of the authority of the United States or is committed for trial before some court thereof, or is in custody for an act done or omitted in pursuance of a law of the United States or of an order, process, or decree of a court or judge thereof, *or is in custody in violation of the Constitution or of a law or treaty of the United States.*"

IV.

What provision of the Constitution, or what law of the United States is thus violated, it must be confessed, is somewhat difficult to conjecture. It is contended, however, that the second section of the fourth article of the Constitution, which provides that "a person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime," and the laws passed by Congress to carry the same into effect, not only render the extradition of a fugitive from justice illegal if effected in any other manner, but any subsequent detention of a person thus irregularly extradited unlawful, although he may be held under a regular warrant of arrest issued from the court having jurisdiction of the crime alleged against him.

A similar contention has been made in a number of other cases, but never sustained by the courts in a single instance. It is true that it has frequently

been held, and quite correctly, that when a person has been brought by force or fraud, or other device of the plaintiff, within a certain jurisdiction in order that process may be served upon him in a *civil* action, he is not bound by such service, and that for the obvious reason that no man should be permitted to take advantage of his own wrong. But a State is never responsible for, nor bound by, the acts of unauthorized individuals, and such acts, whether right or wrong in themselves, cannot be imputed to it, nor take away its sovereign right to try and punish a violator of its criminal laws when once within its custody. The distinction between civil and criminal proceedings in this regard has been distinctly noticed in numerous cases. Chancellor Harper, in *Smith's Case*, 1 Bailey, So. Car. R., p. 291, Note. Johnson, J., in same case, Ib., 289, 290; *People* vs. *Rowe*, 4 Park. Cr. R., 253; Ross & Mann's Case, 21 Iowa, 46; *In re* Noyes, U. S. C. C., New Jersey, reported in 17 Albany L., p. 407; *U. S.* vs. *Lawrence*, 13 Blatch., 306; McAllister, J., in *Ker's Case*, 16 Chicago Legal News, 17.

But, as already stated, it has been universally held, without a single break in the line of decisions, that, no matter by what method a fugitive charged with a violation of the criminal laws of a State may be brought back within its jurisdiction, it has a *right* to hold him to answer for the crime alleged against him, and the courts will not inquire by what means or in what precise manner he may have been brought within the reach of justice.

Scott's Case.

The leading case upon this point is that of Susannah Scott (9 B. & C., 446), decided by Lord Tenterden, in May, 1829, and which has been universally cited as authority for the principle above asserted wherever the question has since been raised. The prisoner, who had been indicted for perjury in England, had fled to Belgium. A warrant for her arrest was issued and placed in the hands of an officer specially designated for that purpose. He pursued her to Belgium, where he seized her and carried her back to England, and application was made to Lord Tenterden for a writ of *habeas corpus* for her release, on the ground of the illegality of her arrest in a foreign jurisdiction. The motion was argued for the prisoner by Mr. Chitty, and resisted by Lord Brougham and Mr. Sergeant Platt, but the writ was refused upon the principle, as stated substantially by Lord Tenterden, that when a party charged with a crime of any kind is brought before a court of competent jurisdiction in the country where the crime was committed it is the duty of the court to see that he shall be held amenable to justice, no matter under what circumstances he may have been brought within its jurisdiction, and that if the arrest was made in violation of the laws of a foreign country, that country must vindicate its own laws by proceeding against the person who violated them.

Smith's Case.

The first American case in which the same principle was distinctly affirmed was *ex parte* Smith, de-

cided by the Supreme Court of South Carolina, during the same year. Smith had been pardoned on condition that he should leave the State and not return. He violated the condition, however, and on proclamation by the governor for his arrest and reimprisonment, fled to North Carolina, where he was pursued, forcibly arrested and taken back to South Carolina without warrant. He there sued out a writ of *habeas corpus* before Chancellor Harper, alleging among other grounds for his discharge, the illegality of his arrest in North Carolina. The Chancellor overruled the motion to discharge him, and delivered an opinion which will be found printed at large in a note to the decision of the Supreme Court in the same case. 1 Bailey, S. Car. R., 291, and in which he discusses with singular clearness and force every principle involved in the case under consideration. He appealed to the Supreme Court of the State, where the decision of the Chancellor was affirmed, and upon the point under discussion here the court said:

"The third and only remaining question is, whether the prisoner is entitled to be discharged in consequence of having been illegally arrested in North Carolina, and brought into this State. The pursuit of the prisoner in North Carolina and his arrest there was certainly a violation of the sovereignty of that State which cannot be commended. But that was not the act of the State but of a few of its citizens, for which the Constitution of the United States has provided a reparation. It gives the governor of that State, a right to demand them of the governor of this, and impnses upon the latter the obligation to surrender them; but until that is refused there is no cause of complaint. * * * * The case then is this: A felon convict flees into North Carolina to avoid the execution of his sentence, and is pursued

and brought back, and although the *manner* of doing it was illegal, the thing in itself was *right*, and exactly what North Carolina was bound to do if it had been properly required." 1 Bailey, S. Car., R., 289–90.

Brewster's Case.

The same principle was asserted by the Supreme Court of Vermont in 1835, in the case of the *State* vs. *Brewster*, 7 Vt., 118. Brewster charged with crime in that State fled to Canada, where he was kidnapped and carried back to Vermont and put upon his trial. The method of his capture was pleaded in abatement, but the Supreme Court said:

"It is a well-established principle of international law that a foreigner is bound to regard the criminal laws of the country in which he may sojourn, and for any offense there committed he is amenable to those laws. In this case the offense, if committed at all, was committed within our jurisdiction and is punishable by our laws. The respondent, though a foreigner, is if guilty equally subject to our jurisdiction with our own citizens. His escape into Canada did not purge the offense nor oust our jurisdiction; being retaken and brought, in fact, within our jurisdiction it is not for us to inquire by what means or in what precise manner he may have been brought within the reach of justice. It becomes immaterial whether the prisoner was brought out of Canada with the assent of the authorities of that country or not. If there was anything improper in the transaction it was not that the prisoner was entitled to protection on his own account."

Dow's Case.

The principle that no irregularity in the extradition of a fugitive criminal, when brought within

the jurisdiction of the court having cognizance of his crime, can be available to him as a means of escaping trial and punishment was strongly asserted by Chief Justice Gibson, of Pennsylvania, in Dow's case, in 1851. Dow, charged with forgery in Pennsylvania, fled to Michigan, where he was seized and taken back to Pennsylvania, without warrant and regardless of the constitutional method of extradition, notwithstanding there had been a requisition upon the governor of Michigan for his arrest and rendition, and for which purpose a warrant had issued. In Pennsylvania he sued out a writ of *habeas corpus* for his release, on the ground of the illegality of his arrest and deportation from the State of Michigan; and it will be observed that the very point upon which he relied for his discharge is precisely the one now under discussion, namely, that the Constitution and laws of the United States having provided a method of extradition between the States, that method *ex vi termini* excluded all other methods, and that his extradition not having been in conformity with that method his imprisonment was *ipso facto* illegal, and that he should therefore be discharged. The chief justice, however, said:

"The practice has been to arrest on hot pursuit a fugitive from justice wherever found, and were not violations of territory consequent on it tolerated by common consent, few fugitives from justice would be brought back. In its practical results the constitutional provision would be nearly inoperative. The tardy publicity of laying the ground for the demand by indictment or affidavit, or transmitting the documents to the proper executive, and procuring a war-

rant of arrest from him, necessarily warns the fugitive of his danger, and leads to another flight. * * * The consequence of the inefficiency of the constitutional provision has been, that extra territorial arrests have been winked at in very State; but an arrest at suffrance would be useless if its illegality could be set up by the culprit. He has been allowed to do so; let the question be answered by the cases quoted. The prisoner in Brewster's case insisted that he was kidnapped abroad, but he was held to answer. That case has not been overruled, or before doubted, and the English courts hold the same doctrine. It was enforced in Susanna Scott's case, and in Mark's, as well as in Krans' case, the broad principle was established that want of authority for the prisoner's arrest cannot protect him from from prosecution ; and Vire Maitre's case shows the decisions of the American and English courts to be founded upon a principle of universal law. A judge at the place of arrest could not be bound to discharge a prisoner proved to have fled from a well-founded accusation of murder." 18 Penna. St., 37.

Rowe's Case.

The principle was again affirmed in the case of the *People* vs. *Rowe*, in 1858, 4 Park. Cr. R., 253. Rowe, accused of grand larceny in Buffalo, N. Y., fled to Canada. A warrant for his arrest was issued and placed in the hands of a deputy sheriff of Erie County, in that State, who went to Canada and made arrangements with a party there to capture Rowe and bring him into the State of New York. The party seized Rowe and forced him, against his will, across the Susquehanna Bridge, where the deputy sheriff, who had accompanied them all the way, arrested him under the warrant. On a motion to quash

on account of this forcible kidnapping, Judge Clinton said:

"No offense against the laws of this State, nor of the United States, was, so far as we can discover, perpetrated by the arrest. We can see no analogy between this case and cases of arrest in civil actions procured by the trick or fraud of the plaintiff. When the defendant is induced by the plaintiff to come within the jurisdiction, the court may discharge him without bail. Here no wrong is chargable to The People. On the other hand, the indictment is, on such a motion as this, conclusive evidence of the prisoner's guilt, and the court would be guilty of a great wrong to The People if it should discharge him untried."

This case is quoted with approval by the Supreme Court of Iowa in—

The Case of Ross and Mann.

These parties had been seized in the State of Missouri without warrant and forced against their will into Iowa, to answer to a criminal charge pending him in the latter State, and the illegality of their arrest having been set up in abatement to the prosecution, the Supreme Court, to which the case had been taken, said:

"The claim is that this arrest was in violation of law; that the prisoners were brought within the jurisdiction of the State by fraud and violence and without the semblance of authority or right, and that comity to the rights of a sister State, a just appreciation of the rights of the citizen, and a due regard to the integrity of the law and its administration demand that the courts should, under such circumstances, refuse their aid, and that there can

be no rightful exercise of jurisdiction over those thus arrested."

And after having stated the question in this strong language, and discussed some technical objections to the plea, the opinion proceeds :

"The liability of the parties arresting them without legal warrant for false imprisonment, or otherwise, and their violation of the criminal laws of Missouri, may be ever so clear, and yet the prisoners not be entitled to their discharge. The offense being committed in Iowa, is punishable here. There is no fair analogy between civil and criminal cases in this respect. In the one (civil) the party invoking the aid of the court is guilty of fraud or violence in bringing the defendant or his property within the jurisdiction of the court. In the other the people of the State are guilty of no wrong. The officers of the law take the requisite process, find the prisoners charged within the jurisdiction, and this, too, without force, fraud, or violence on the part of any agent of the State or officers thereof, and it can make no difference whether the illegal arrest was made in another State or another government. The violation of the other sovereignty, so far as entitled to weight, would be the same in principle in the one case as in the other. That our laws have been violated is sufficiently shown by the indictment. *For this the State had a right to detain them as prisoners, and it is of no importance how or where their capture was effected.*"

Noyes' Case.

The same question, as well as the jurisdiction of the Federal Courts, under such circumstances, was brought directly under judicial cognizance *in re* Noyes in the District Court of the United States for

the District of New Jersey in 1878. Noyes, who was held for trial in a State court for a crime against the State laws, sued out a writ of *habeas corpus* before the District Court of the United States, upon the alleged ground that he had been wrongfully brought within the jurisdiction of New Jersey by an illegal extradition from another State and was held in custody in violation of the Constitution and laws of the United States; and Judge Nixon after an elaborate review of the authorities, said:

"It is the conclusion of the court upon principle and authority that the State court has a right to hold the prisoner for trial for the offense charged against him without reference to the circumstances under which his arrest was made in a foreign jurisdiction. It necessarily follows that there is no authority here to discharge him on *habeas corpus*. Neither the Constitution of the United States nor section 753 of the Revised Statutes makes provision for the writ in such a case and the prisoner must be remanded." 17 Albany, L. J., 407.

From these cases, which have been collated, and quoted to greater or less extent, for the convenience of the court, it will be seen that the point under discussion has been presented in the State courts, and in the Federal Courts, and under a great variety of circumstances, and that it has invariably been ruled adversely to the appellant's contention here.

Ker's Case.

The question has, however, undergone a very thorough examination, and with a similar conclusion, not only in this, but a number of other courts, in the

comparatively recent case of Ker, which was as perfectly analogous to the one under consideration as any two cases could well be found. Ker, as the court will remember, was indicted in Cook County, Illinois, for embezzlement and larceny; he fled the country, and took refuge in Peru; proceedings were instituted for his extradition under the treaty between the United States and that country; the agent appointed on the part of our Government to receive and bring him to the United States, instead of resorting to the authority with which he was armed for the regular extradition of the fugitive, kidnapped him by force, and brought him to San Francisco without legal warrant, whence he was taken to Illinois under a requisition of the Governor and delivered into the custody of the proper authorities of that State. He contested the legality of his imprisonment under such circumstances with unusual pertinacity and in a variety of ways. He first sued out a writ of *habeas corpus* before the Circuit Court of the State raising the precise point made here, that the illegality of his original arrest and deportation from Peru was aviolation of the treaty between that Government and our own, and, consequently, rendered his subsequent detention under the regular process of that State unlawful. The Court remanded him to jail, however, holding that no matter under what circumstances, or by what method he might have been arrested in another jurisdiction, being then within the jurisdiction of Illinois, and under its writ to answer for an alleged crime against its laws that State had a perfect right to hold him for trial, 16 Chic., L. N., 17. He then applied to the Circuit Court of the United States for a writ of *ha-*

beas corpus upon the same grounds, but Judge Drummond refused it, saying in his opinion :

"It seems to me that it is not competent for the court to look into the circumstances under which the capture was made, and the transfer of the prisoner from Peru to the United States, in order to free him from the consequences of the lawful processes which have been served upon him for the offense or offenses which he is charged with having committed within the county of Cook and State of Illinois." 18 Federal Rep., 171.

When arraigned on the indictment in the trial court, he raised the same question on a plea in abatement, which was held bad on demurrer, and, after conviction, carried it, by writ of error, to the Supreme Court of the State, where the same view was maintained and the judgment against him affirmed (110 Ill., 627), but still not content, he brought the case to this Court, where the point was carefully reviewed, and finally settled in accord with the unbroken line of precedents above cited. 119 U. S., 437.

V.

It is contended that the detention of appellant, under the circumstances, is in violation of the provision in the Fourteenth Amendment to the Constitution, that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of life, liberty, or property without due process of law." But what possible privilege or immunity that appellant can claim as a citizen of the United States, is abridged by his detention in

the Pike County jail, under the regular process of Kentucky to answer an indictment pending against him, in the Criminal Court of that County for murder, it is quite impossible to imagine.

It cannot be maintained that, being a citizen of West Virginia, and residing therein, he had a personal *right* of asylum in that State, which, having been violated by his forcible arrest and deportation, should be redressed by his discharge and return under a proceeding like the present. Such a hypothesis would be directly in the teeth of every case cited above. In fact, a very little reflection will be sufficient to show that there is no such right, and can be no such right in a fugitive from justice. If there is, there can be no such thing as the right of extradition without the fugitive's consent. The two rights are totally inconsistent with each other. If one exists, the other cannot.

It is true that, in the absence of any conventional regulation between two independent sovereignties, either has the right to *permit* a fugitive from the justice of the other to seek refuge and remain within its territory, and it may or may not allow him to be taken by or surrendered to the sovereignty whose laws he has violated, at its own discretion; but where there is an extradition treaty or other conventional arrangement between them covering certain crimes, that *right of permission* is taken away so far as those crimes are concerned, and not only has a fugitive from the justice of one of them, charged with the commission of any of the specified crimes against its laws, no *right* of asylum in the territory of the other, but the other sovereign itself has no

right to harbor or permit him to remain there if his rendition is demanded.

This doctrine is clearly and forcibly laid down by this court in the case of *Ker* vs. *Illinois*, 119 U. S., 442, and applies with equal if not greater force to the matter of extradition between the States of this Union. The second section of the fourth article of the Constitution covers every variety of crime, from high treason to petit larceny, and so far from guaranteeing a *right* of asylum to a fugitive criminal anywhere, it confers upon each State the *right* to demand such fugitive from its justice when found in another, and imposes the correlative *duty* upon the other to surrender him up when properly demanded. The present imprisonment of appellant therefore deprives him of no privilege or immunity guaranteed by the Constitution to him as a citizen of the United States.

VI.

It is claimed, however, that having been forcibly kidnapped in West Virginia, and taken into Kentucky, appellant's present detention, although under a regular warrant, and to answer in a court of competent jurisdiction to indictments regularly found against him is "*without due process of law.*"

It is a sufficient answer to this to say that Kentucky did not lay her hand upon him until he was found within her jurisdiction ; that she did so then through the same legal agencies, by the same legal methods, and detains him now under the same processes employed in the administration of her criminal laws in all other cases. This phase of the ques-

tion has been so fully met by this court in the case of *Illinois* vs. *Ker* that it would seem like trifling with its patience to argue it further.

Recapitulation.

From the foregoing, the following principles are deducted :

First. That no provision of the Constitution of the United States, or of any law made in pursuance thereof, guarantees to a fugitive from the justice of one State, "a right of asylum," or immunity from arrest for his alleged crime in another.

Second. That the right which each State would have otherwise had, as an independent sovereignty, to harbor a fugitive from the justice of another, has been surrendered by the second section of the fourth article of the Federal Constitution.

Third. That every State has a right to protect its own citizens, and indicate its own dignity by the punishment of those who violate its criminal laws, and it was in aid, and not in derogation of that right, that the provisions in the Constitution and laws of the United States in relation to inter-State extradition were enacted.

Fourth. That having the right to punish a violator of its criminal laws, whether citizen, denizen or alien, it necessarily has the right to *hold* him for punishment when in custody under the regular process, no matter in what method or by what means he may have been brought within its jurisdiction.

Fifth. That such *holding*, under a regular warrant issued from the proper court, and executed by